

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement"), effective as of the 1st day of July, 2010, by and between **PETER BURNHAM**, residing at [REDACTED] [REDACTED] Colts Neck, New Jersey 07722 (the "Employee"), and **THE BOARD OF TRUSTEES OF BROOKDALE COMMUNITY COLLEGE**, a body corporate organized and existing under the laws of the State of New Jersey, with its principal offices located at 765 Newman Springs Road, Lincroft, New Jersey 07738-1597 (the "Employer");

W I T N E S S E T H

WHEREAS, the Employee is experienced, knowledgeable and has served with distinction as President of the Employer since 1991; and

WHEREAS, the Employer has determined that it would be desirable and in the best interests of the Employer to secure the services of the Employee for an extended term; and

WHEREAS, the Employer wishes to provide incentives for the Employee to remain as President of the Employer; and

WHEREAS, the Employee wishes to continue in office as President of the Employer;

NOW, THEREFORE, in consideration of the premises, mutual covenants and obligations herein contained, the Employer and the Employee hereby agree as follows:

1. **Term.** The Employer hereby continues the employment of the Employee under this Agreement, and the Employee hereby accepts employment with the Employer under this Agreement for a four-year term, commencing on July 1, 2010

(the effective date of this Agreement) and expiring on June 30, 2014 (the "Term"), with the Employee having the option to terminate this Agreement on any date on or after July 1, 2013. The Term of this Agreement may be extended as of or at any time prior to the fourth anniversary of the effective date of this Agreement for a Term and under conditions then agreed to by the parties. This Agreement, and the employment of the Employee, may be terminated by either party in accordance with this Section and Section 13 hereof.

2. **Duties.** During the Term of this Agreement, the Employee shall serve as the President of the Employer, in which capacity he shall have overall responsibility for all matters relating to the personnel and operations of the Employer. The Employee agrees to devote his full time energy and ability to his professional responsibilities to the Employer, in accordance with law and the applicable requirements of the Trustees of the Employer as they may be from time-to-time adopted, amended or revoked.

3. **Compensation.**

3.1 For the services rendered to the Employer during the Term of this Agreement, the Employer shall pay to the Employee compensation consisting of (a) Base Compensation, in accordance with Section 3.2, and (b) Performance Compensation, in accordance with Section 3.3.

3.2 Base Compensation shall be determined annually through the passage of a resolution by the Employer's Trustees, and such Base Compensation shall not be less than the \$216,015.60 per annum in Base Compensation for the first year of this Agreement, July 1, 2010 through June 30, 2011. Such Base Compensation

shall be payable in accordance with the customary payroll practices of the Employer. In each year, the Employer's Trustees will provide yearly evaluations of the Employee's performance in office. Said evaluations, following a mutually acceptable format and focusing on mutually agreed upon goals and objectives, will be provided annually by the Employer's Trustees. Such evaluations may serve as the basis for any compensation adjustment, whereby the Employer, in its sole and absolute discretion, and through the passage of a resolution by the Employer's Trustees, may increase the Employee's Base Compensation in any subsequent year or from time-to-time, but shall not be required to do so.

3.3 For each twelve (12) consecutive month period commencing on the effective date and based upon the aforesaid evaluations, the Employer may, through the passage of a resolution by the Employer's Trustees, award and pay to the Employee performance compensation in addition to his Base Compensation under Section 3.2, above, but the Employer shall not be required to do so.

4. **Expenses.** In accordance with amounts set up in the annual budget of the Employer by the Employer's Board of Trustees for this purpose, the Employer shall reimburse the Employee, upon presentation to the Employer of written vouchers with attachments, or receipts satisfactory to the Employer, for all expenses incurred by the Employee in the performance of his duties for the Employer, the promotion of the Employer and other business related expenses, which shall include expenses incurred for the convenience or benefit of the Employer for travel, transportation, accommodations, meals and entertainment, including expenses incurred by the Employee on behalf of the Employee's spouse or companion in activities which

serve as a bona fide purpose in furtherance of the business of the Employer. The Employer shall be responsible for the annual dues of the Employee at the golf club of which he is a member. The Employer shall also pay the full amount of all capital assessments of the Employee's country club, one-half of which shall be repaid to the Employer by the Employee in equal payments deducted from the Employee's periodic Base Compensation payments during the remaining Term of this Agreement. There shall be no interest charged to the Employee under this arrangement, and if there remains any unpaid balance due to the Employer upon the separation from service with the Employer by the Employee, the parties shall agree at that time as to the disposition of that balance. The Employee may prepay all or a part of the amount due and owing to the Employer under this Section 4 at any time and in any amount as he may elect, with no penalty.

5. **Automobile.** During the Term hereof, the Employer, at its expense, shall from time-to-time provide the Employee with a new automobile which is suitable to his office, as shall be determined by the Employer's Trustees. The Employer shall reimburse that portion of the costs of maintenance, fuel, tolls, garaging, insurance and other costs incident thereto which are the same percentage of the total cost of maintaining the automobile as the percentage of use of the automobile for the business of the Employer.

6. **Assistance and Facilities.** The Employer shall furnish the Employee with the assistance and facilities necessary for the performance of the Employee's duties for the Employer under this Agreement.

7. **Vacation.** During the Term of this Agreement, the Employer shall be entitled to annual paid vacation of the same duration as other executive officers of the Employer, which vacation shall be taken at such time or times as shall not unreasonably interfere with the operations of the Employer.

8. **Disability.**

8.1 During the Term of this Agreement, the Employee shall be entitled, in addition to other benefits under this Agreement, to participation under any disability insurance program or programs sponsored by the Employer, in accordance with such programs' provisions and at the Employer's cost and expense.

8.2 If the Employee is unable, due to illness, injury or other disability, to perform his duties under this Agreement, the Employer shall provide payment for sick days and short term disability in accordance with the programs and practices of the Employer for all of its permanent employees. Payments under this Section 8.2 shall cease upon the first to occur of the following:

- (a) the Employee's return to work;
- (b) exhaustion of the Employee's accumulated sick days and the expiration of coverage under the Employer's short term disability plan;
- (c) the Employee's beginning long term disability payments under the Employer's long term disability plan (if any); or
- (d) the Employee's death.

9. **Payments on Death.**

9.1 The Employer shall reimburse the Employee for the annual amount paid by the Employee for coverage by mortgage life insurance, not in excess of \$5,000.00 per policy year.

9.2 In addition to the provisions of Section 9.1, upon the Employee's death while he is employed hereunder, the Employer shall pay to, or cause to be paid to, the Employee's designated beneficiary or, if none, to his personal representatives: (a) his accrued, unused vacation days, described in Section 7, above; (b) his vested benefits due from the Employer under retirement programs in which he participated; and (c) subject to required documentation, any unpaid, reimbursable expenses incurred to the date of death.

10. **Retirement Benefits.** The Employer shall contribute to the account of the Employee with the Teachers' Insurance and Annuity Company/College Equity Retirement Fund ("TIAA-CREF") in accordance with the retirement program maintained with TIAA/CREF for its employees in accordance with Section 403(b) of the Internal Revenue Code of 1986, as amended (the "Code") an amount equal to five percent (5%) of his Base Compensation per annum (the "Base Contribution") (collectively, the "Plan"). In addition, the Employer wishes to make an additional retirement vehicle contribution for the benefit of the Employee in recognition of his exemplary service and irreplaceable contributions to Brookdale Community College, its academic excellence and its status in the community. This additional contribution shall be in an amount, fixed by the Board of Trustees of the Employer, which, when added to the Base Contribution, does not exceed \$45,000.00 for each calendar year during the

Term of this Agreement, or such other amount as may be determined in future calendar years during the Term hereof by application of the limitations on contributions to retirement plans by operation of federal law. Should the ability of the Employer to make this additional contribution become reduced or eliminated in the future by reason of changes in the law or administrative practices of TIAA-CREF, the Employer will provide the additional contribution in a manner permitted by law which allows the Employee to defer recognition of income attributable to the additional contribution until actual receipt by the Employee of benefits attributable to the additional contribution.

11. **Indemnity.** The Employer agrees, to the fullest extent permitted under the laws of the State of New Jersey (the "State"), to defend and indemnify the Employee against and hold the Employee harmless from any and all claims, suits, loss, liability, damage and expense (including attorneys' fees) asserted against the Employee by anyone other than the Employer for actions taken by the Employee in the exercise of good faith judgment in furtherance of the performance of his duties hereunder.

12. **Medical and Other Benefits.**

12.1 The Employee, his spouse and dependent children shall be covered at the Employer's expense, except as set forth below in the next two sentences, for medical, dental, hospitalization, vision or prescription drug expense plans and all other benefits (collectively, "Health Plan") to the same extent as those provided to or made available to Administrative officers of the Employer. Effective July 1, 2010, the Employee will contribute 1.5% of his pensionable Base Compensation and Performance Compensation toward the cost of the Employer's Health Plan premiums, which amount shall include, but is not limited to, any additional Employee contribution

toward the cost of the Employer's Health Plan premiums required by State law prior to or after July 1, 2010. Accordingly, Employee shall contribute all amounts required by State law toward the cost of the Employer's Health Plan premiums during the Term of this Agreement.

12.2 In lieu of furnishing the Employee with a residence owned or rented by the Employer for its President, and in order that the Employee may occupy a residence commensurate with his office and as may be required for entertainment or other purposes for the proper performance of his office during the Term hereof, the Employer shall pay to the Employee an amount in lieu of providing a residence, payable in equal monthly installments of \$1,500.00, commencing on the effective date, plus, any increase in real estate taxes on the Employee's residence which adjustments shall be made upon the Employee's notification of the increase by means of presenting appropriate documentation to the Employer, using 2003 as the base tax year with reference to which subsequent adjustments are to be made.

12.3 The Employer shall pay to the Employee an amount during each twelve (12) month period commencing on the effective date during the Term hereof of \$5,000.00 for enhanced dental coverage for the Employee, his spouse and dependent children.

12.4 During each consecutive twelve (12) month period commencing on the effective date, the Employer shall pay to or on behalf of the Employee for each of his children who have not attained a bachelor's degree or master's degree and who are consecutively attending, without interruption (other than normal (i.e., winter and summer) academic break interruption), degree granting

institutions of higher education as undergraduates and/or as graduate students, reimbursement for tuition paid by the Employee in an amount not in excess of the amount actually expended for each child, or the amount of tuition, fees and room and board at Rutgers, the State University of New Jersey, whichever amount is less, after deduction of all applicable taxes; however, such reimbursement shall not exceed \$40,000.00 in the aggregate for both children (in the case of graduate school tuition reimbursement, such reimbursement shall be for a period not to exceed two (2) successive school years).

13. Termination and Amendment.

13.1 Optional Termination. Except as set forth in Paragraph 1 hereof, this Agreement may be terminated, without cause, effective at any time (subject to notice as hereinafter provided) during the Term, by the Employee in his discretion, upon at least one year's and no more than two years' prior written notice to the Employer. In this event, the Employee, (a) shall immediately repay to the Employer the sum of any and all additional retirement vehicle contributions made by the Employer in accordance with paragraph 10 hereof, and (b) if requested by the Employer, shall continue to render services to the Employer, and shall be paid his Base Compensation at the rate in effect on the date he gives notice, to the date of actual separation from service. In addition and following the Employee's actual separation from service, the Employer may retain the services of the Employee, and the Employee hereby agrees to be retained and cooperate with the Employer, on a per diem basis to assist the Employer in hiring and integrating a new President, for a limited period of time and under such written terms and conditions as the parties shall agree, during which he

shall receive from the Employer (a) any reimbursable expenses incurred to the date of actual separation from service; (b) his vested benefits under retirement programs in which he participates which are the responsibility of TIAFF-CREF; (c) the continued use of his automobile; (d) the continuation of his health insurance benefits; and (e) payment for any unused vacation to which Employee is entitled hereunder. The continued payment of the Employee's Base Compensation, as well as the continuation of his health insurance and his automobile maintenance shall be made in accordance with the provisions of this Agreement. All other payments and transfers shall be made as soon as practicable following the termination of this Agreement.

13.2 Discharge for Cause. The Employer may terminate the Employee's employment hereunder and discharge him forthwith, for Cause. If the Employer shall terminate the Employee's employment for Cause, the Employer's obligations under this Agreement to pay further compensation in any form or amount shall cease forthwith, except that the Employer will pay the Employee, within thirty (30) days from the date of termination of his employment, in full and complete satisfaction of all of the Employer's obligations under this Agreement: (a) Base Compensation through the date of termination; (b) subject to required documentation, any unpaid reimbursable expenses incurred to the date of termination; and (c) any accrued but unused vacation days at the rate described in Section 7. The Employee shall remain entitled to all amounts standing to his credit under the TIAA-CREF retirement plan.

13.2-1 For the purposes of this Agreement, the word "Cause" shall mean incapacity, demonstrable professional incompetence, neglect of duty, insubordination to the Employer's Trustees, conviction of a felony or any offense

involving moral turpitude upon a plea or verdict of guilty or following a plea of *nolo contendere*, or sexual harassment or other conduct or unethical behavior which falls below minimum standards of professional integrity or adversely affects the Employer.

13.3 This Agreement may be amended at any time and from time-to-time by the Employer, with the written consent of the Employee. All amendments and adjustments to amounts determined by reference to other documents shall be attached to this Agreement and made a part hereof upon their execution by the parties.

13.4 **Covenant Not to Compete.** The Employee acknowledges that his employment by the Employer is of a special, unique, unusual and extraordinary character, and the nature of the Employee's services, position and expertise, including his experience in the administration of institutions of higher education is such that he is capable of competing with the Employer in the State of New Jersey to the detriment of the Employer. The Employee further acknowledges that his employment and other relationships with the Employer have and will continue to bring him into close contact with many confidential affairs of the Employer, including without limitation information about processes, costs, labor and employment matters, contracts, key personnel, pricing policies, operational methods and other affairs and methods, plans for future development and any other information that is not public information. In recognition of the foregoing, the Employee covenants and agrees that during the stated Term of this Agreement with the Employer, whether the Employee elects to terminate it in accordance with sections 1 or 13 hereof, the Employee shall not, directly or indirectly, in any County within the State of New Jersey, serve in a senior management position at any Competitive Higher Educational Institution (as defined herein), or take away or

interfere with any trade, business or patronage of the Employer or interfere with any officer, employee, representative or agent of the Employer in providing services to the Employer or induce any of the foregoing to leave the employ of the Employer or violate the terms of any agreement they may have with the Employer. For purposes of this Section 13.4, the term "Competitive Higher Educational Institution" shall mean any entity authorized under the laws of the State of New Jersey to grant a degree upon the completion of a prescribed course of study, whether public, private, religious, for profit or not for profit and any affiliated entity therewith. Notwithstanding the provisions of this Section 13.4, the Employee shall not be prohibited from undertaking any professional activity, including but not limited to, teaching and consulting, on a less than full-time basis which does not interfere with the performance of his duties hereunder nor from assuming any other employment, which might otherwise violate the terms of this Agreement, with the consent of the Employer's Trustees. The Employer may, in its sole and absolute discretion, waive the provisions of this Section 13.4 if, in the judgment of the Employer through the passage of a resolution by the Employer's Trustees, the conditions of the Employee's separation do not warrant full enforcement hereof.

13.5 Injunctive Relief. If the Employee commits a breach of any of the provisions of Section 13, the Employer shall have the right and remedy to have such provisions specifically enforced by any court of competent jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Employer and that money damages will not provide an adequate remedy to the Employer. It is the intention of the Employee and the Employer that the provisions of this Agreement shall be enforced to the fullest extent permissible

under the laws and public policies of the State of New Jersey and policies of the Employer's Trustees.

The right and remedy set forth in Section 13.5 shall be in addition to and not in lieu of any other rights and remedies available to the Employer under law or in equity. If any provision contained in Section 13 of this Agreement is held to be unenforceable because of the duration of such provision or the geographical area or businesses covered thereby, the parties hereto agree that the court making such determination shall have the power to reduce the duration and/or area and/or types of entities covered by such provision and in its reduced form such provision shall then be enforceable.

14. **Consent to Jurisdiction.** Each of the Employee and Employer hereby consents to the jurisdiction of the Superior Court of the State of New Jersey, County of Monmouth, and the United States District Court for the District of New Jersey for all purposes in connection with this Agreement and further consent that any summons or other process in connection therewith may be served by certified or registered mail or by personal service in accordance with the provisions of this Agreement, within or without the State of New Jersey, provided a reasonable time for appearance, answer and/or motions is allowed.

15. **Assignment.** The parties acknowledge that the services to be rendered by the Employee are unique and personal. Accordingly, neither party may assign (other than in the case of naming a designee or beneficiary of life insurance or a beneficiary of other plans in which the Employee participates), any rights or delegate any duties or obligations under this Agreement.

16. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, distributees and successors, and permitted assigns.

17. **Amendments.** No modification, amendment, addition to, or termination of this Agreement, nor waiver or any of its provisions, shall be valid or enforceable unless in writing and signed by the parties affected hereby.

18. **Notices.** Any notice, request, instruction or other document to be given under this Agreement by any party hereto to any other party shall be in writing and delivered personally against signed receipt, dispatched by facsimile transmission, or sent by a nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested:

As to the Employee, to:
Peter F. Burnham


Colts Neck, New Jersey 07722

As to the Employer, to:
Brookdale Community College
765 Newman Springs Road
Lincroft, New Jersey 07738-1597

with a copy to:
Wilentz, Goldman & Spitzer, P.A.
90 Woodbridge Center Drive
Suite 900 Box 10
Woodbridge, New Jersey 07095
ATTENTION: John M. Cantalupo, Esq.

or at such other address or facsimile number for a party or as shall be specified by like notice. Any notice that is delivered personally in the manner provided herein shall be deemed to have been duly given to the person or entity to which it is directed upon actual receipt by such party (or its agent for notices hereunder). Any notice that is dispatched by

facsimile transmission shall be deemed to have been duly given to the person or entity to which it is addressed upon transmission and confirmation of receipt by a facsimile operator. Any notice that is addressed as provided herein and mailed by registered or certified mail shall be conclusively presumed to have been duly given to the person or entity to which it is addressed at the close of business, local time of such party, on the fifth calendar day after the day it is so placed in the mail. Any notice that is addressed as provided herein and sent by a nationally recognized overnight courier service shall be conclusively presumed to have been duly given to the person or entity to which it is addressed at the close of business, local time of such person or entity, on the next business day following its deposit with such courier service for next day delivery. Notwithstanding the foregoing conclusive presumptions of receipt, any party sending a notice under this Agreement shall take steps which are reasonable in the particular circumstances to confirm, through telephone or written confirmation from the intended recipient party (or its attorney listed above), return receipt from certified mail or otherwise, that the recipient party has in fact received such notice.

19. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto with respect to the subject matter contained herein and supersedes, nullifies, voids and renders of no further force and effect all prior agreements, whether oral or written, between the parties hereto with respect to the subject matter contained herein. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument.

20. **Waiver.** Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such term, covenant or condition nor shall any waiver or relinquishment of any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

21. **Titles.** The titles of all Sections herein are for convenience only and shall not be considered in construing the provisions hereof.

22. **Severability.** In the event any portion of this Agreement shall be deemed to be void or unenforceable, the balance of the Agreement shall remain in full force and effect as if the void or unenforceable portions were not included.

23. **Representations and Warranties of Executive.** The Employee hereby represents and warrants that (a) he has the right to enter into this Agreement with the Employer and to grant the rights contained in this Agreement, and (b) the provisions of this Agreement do not violate any other contracts or agreements that the Employee has entered into with any other individual or entity.

24. **Survival.** The following provisions of this Agreement shall survive, in accordance with their terms, the expiration or termination of this Agreement for any reason: Sections 3.3, 11, 13, and 14.

25. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the substantive laws of the State of New Jersey without giving effect to the principles of conflict of laws thereof.